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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Justice Satish K. Agnihotri

WRIT PETITION (L) NO. 2095 OF 2007

Petitioner	State of Chhattisgarh, through the Divisional Forest Officer, North Forest, North Forest Division (Now Raipur Forest Division), Raipur.
	Versus
Respondent	Rattilal Gandheshwar, S/o Kailuram Gandheshwar, Ward No.7, Badaipara, Distt. Mahasamund (CG).

Present :- Smt. Anju Ahuja, Dy. Govt. Advocate for the State/ petitioner.

ORDER
(Passed on 4th April, 2007)

By this petition, filed under Article 227 of the Constitution of India, the petitioner impugns the order dated 21-2-2002 (Annexure-P/1) whereunder it was directed to pay a sum of Rs.47,450/- as arrears of wages.

2) The indisputable facts in nutshell are that the respondent was engaged as skilled labour by the petitioner department. His services were discontinued with effect from 6-11-1982. The respondent raised an industrial dispute. The Deputy Labour Commissioner, Raipur, referred the dispute vide letter No.2580 dated 25-9-1991 to the Labour Court in case No.39/91/ID Act(Ref.). The Labour Court after hearing the parties passed the award on 3-11-1992 (Annexure-P/2) holding that the discontinuation of services of the respondent was illegal. Thus, the petitioner was directed to reinstate the respondent in service

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with full back wages. The said award attained finality, as the petitioner did not move higher Court for setting aside the said award. In pursuance of the same, the respondent was reinstated in services and was granted back wages also. According to the petitioner, after joining the service the respondent worked from 21-1-1995 to 14-2-1995, thereafter he remained absent. The petitioner did not take any step to initiate any proceeding against the respondent.

3) The respondent filed an application under Section 33C of the Industrial Disputes Act, 1947 stating that though the amount due to him from 1-11-1982 to 29-12-1994 had been paid by the petitioner department, but no wages of skilled worker was paid by the petitioner from 30-12-1994 onwards. The respondent in his application (Annexure-P/3) has clearly stated about the date of resuming work in the office and non-payment of his salary during the period up to 30-9-1997. The petitioner filed its reply (Annexure-P/4) denying all the facts stating that the respondent remained intentionally absent and the respondent was not entitled to any payment on the principle of no work no pay. The Labour Court after having considered all the aspects vide impugned order dated 21-2-2002 (Annexure-P/1) held that the petitioner had failed to prove the fact that the respondent remained absent without intimation from 14-2-1995 onwards and as such the petitioner was directed to pay a sum of Rs.47,450/- as back wages, for non payment of wages to the respondent.

4) The petitioner has not taken any steps from the date of the impugned order i.e. 21-2-2002 till filing of this petition on 23-3-2007. Even earlier also according to the petitioner, the respondent was absent. No step was taken on the part of the petitioner to take any

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departmental action against the respondent for a period of more than five years.

5) The Supreme Court in the case of **Karnataka Power Corporation Ltd. through its Chairman & Managing Director and another vs. K. Thangappan and another**[1] observed as under :

> "Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in the conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prasad vs. Chief Controller of Imports and Exports*. Of course, the discretion has to be exercised judicially and reasonably."

6) I have heard learned counsel for the petitioner and gone through the pleadings, judgment/award passed by the Labour Court and other documents appended thereto. It is evident that the Labour Court has recorded the finding after hearing both the parties and perusing their averments made in the application as well as in reply, while coming to the conclusion that the petitioner has failed to prove that the respondent remained absent. The natural consequence would be grant of back wages when the case of the respondent is that he continuously attended the office, but the petitioner did not pay any wages for the period he had worked. There is no infirmity, illegality or jurisdictional error in the impugned award.

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[1] (2006) 4 SCC 322

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7) Thus, this Court in exercise of its supervisory jurisdiction is of the view that no interference is called for as the impugned award is passed on facts and on appreciation of evidences produced by the parties. This petition is accordingly dismissed summarily.

Sd/-
Satish K. Agnihotri
Judge

Gowri